

To: Eiseman, Robin[Eiseman.Robin@epa.gov]; Gray, Heather[Gray.Heather@epa.gov]
Cc: Mulkey, Marcia[Mulkey.Marcia@epa.gov]; Ajl, Diane[Ajl.Diane@epa.gov]
From: Eiseman, Robin
Sent: Thur 1/23/2014 4:41:11 PM
Subject: RE: Freedom article

Ignore what I just said. The article was last updated yesterday afternoon. That explains why it hasn't appeared yet on the docket. They were still circulating the proposed order last night.

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From: Eiseman, Robin
Sent: Thursday, January 23, 2014 11:40 AM
To: Gray, Heather
Cc: Mulkey, Marcia; Ajl, Diane
Subject: FW: Freedom article

FYI. Judge granted Freedom Industries up to \$5 million to continue its operations and meet its environmental cleanup obligations. The online docket has not yet posted the order. I will forward once I can access it.

Robin

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From: Tenenbaum, Alan (ENRD) [<mailto:Alan.Tenenbaum@usdoj.gov>]
Sent: Thursday, January 23, 2014 11:29 AM
To: Call, Gary (USAWVS); Van Eaton, Josh (ENRD); jeffrey.Sands@usdoj.gov; Eiseman, Robin
Subject: Freedom article

UPDATE: Bankruptcy judge allows up to \$5 million in a loan to Freedom Industries

Posted: Jan 21, 2014 11:06 AM EST
Updated: Jan 22, 2014 10:39 AM EST

By Linda Harris, Legal Reporter - [email](#)

By Alanna Autler, Reporter - [bio](#) | [email](#)

By Jessie Shafer, Reporter - [bio](#) | [email](#)

Updated: Wednesday, January 22 2014 4:45 PM EST 2014-01-22 21:45:50 GMT Jan 22, 2014 4:45 PM EST

UPDATE:

A federal bankruptcy judge approved a loan of as much as \$5 million to help Freedom Industries pay for cleaning up the spill site and other remediation expenses that are the result of the Jan. 9, 2014 chemical leak into the Elk River.

U.S. Bankruptcy Judge Ronald Pearson said during a Jan. 21 hearing in Charleston, WV, that this case is unique in that the parties are basically predicting future litigation.

Gary Southern, president of Freedom Industries, testified during the hearing.

"The days since Jan. 9 have been completely chaotic," Southern said about the customer relations aspect of the incident. "Generally speaking, there is a level of mass hysteria."

Southern also testified that business not related to the Etowah terminal, where the leak occurred, is continuing. All business that was being conducted prior to Jan. 9 continues except for bringing in new materials into that storage facility.

Freedom Industries' Chief Financial Officer, Terry Cline, also testified during the hearing that he had spoken with Diversified Services on Monday, Jan. 20. Cline said that the company, which is serving as a subcontractor on the cleanup and remediation process, told him that Freedom Industries will owe Diversified between \$700,000 and

\$800,000. Cline said Freedom Industries has paid \$300,00 of that amount to date.

Cline testified during the hearing that Freedom Industries needed to have the situation under control before he could do payroll for its 51 employees on Wednesday, Jan. 22. He said Freedom Industries had \$6 million in accounts payable at the time of the chemical leak Jan. 9.

ORIGINAL:

U.S. Bankruptcy Judge Ronald Pearson said Jan. 21 during a hearing on the "first day" motions filed by Freedom Industries he needed to hear more about the company's financial status and obligations in order to grant a loan. Two high-ranking executives testified in court to explain the company's current position after the chemical crude MCHM leaked into the Elk River.

West Virginia American Water Company wants the judge to reject Freedom Industries' debtor-in-possession financing plan and other motions until more is known about the state of its business and finances, as well as its insurance coverage.

Freedom Industries' Chief Financial Officer, Terry Cline, spoke at the hearing as a witness. Cline has worked at the company since 2005. He said Freedom Industries owned Poca Blending and the Etowah Terminal, the Charleston site that leaked MCHM into the Elk River Jan. 9.

Cline said the Charleston Etowah site and Poca Blending were separate entities, but Freedom Industries merged the bodies Dec. 31. Financial documents were kept at Poca Blending, but most information was stored at the Etowah facility.

He explained Freedom Industries boomed seasonally, with roughly 20 percent to 30 percent of revenue coming from November through March, with inventory built up during the year and distributed during the peak season, so in a "good year," he said, they would "end up with nothing."

Cline said the company had never missed its payroll, and money was getting a little tight from Dec. 31 through Jan. 9, but still within a normal range. He said the company tries to maintain between \$500,000 and \$1 million in its checking account, and even though it provides materials throughout the month, bills are only sent out at the end of the month.

Cline said the company had already put \$300,000 toward environmental cleanup efforts. He also said the company's payroll was due Jan. 22, and it would range between \$150,000 and \$200,000, which is higher than usual because of accumulated overtime hours. He said the company lacks the money right now to pay for payroll and the cleanup costs.

He also stressed that the industry is competitive and the company's competitors are jumping in to supply its customers with better prices.

West Virginia American Water Company said in its filing the DIP plan "smacks of collusion" between the embattled chemical company and WV Funding.

Debtor-in-possession, or DIP lenders, typically enjoy priority claim status, so when Freedom begins repaying its debts, WV Funding would be first in line.

WV Funding, however, was incorporated Jan. 17 as a pass-through of sorts for Mountaineer Funding.

Papers on file with the West Virginia Secretary of State's Office list WV Funding's principal address as 61 Fourteenth St., Wheeling and its only member as Mountaineer Funding.

Mountaineer Funding, also formed Jan. 17, also lists its principal address as 61 Fourteenth St., Wheeling, and identifies J. Clifford Forrest as its initial member.

Forrest founded Rosebud Mining Co. in Pennsylvania in 1979. Papers on file with the Pennsylvania Secretary of State list Rosebud Mining's address as 301 Market St., Kittanning, the same address noted in a 2012 filing for Chemstream Holdings.

In its Jan. 17 bankruptcy filing, Freedom Industries identified Chemstream as its new owner, while its proposed DIP agreement indicates Mountaineer Funding will sign on behalf of WV Funding.

"Freedom seeks to stampede this court into irrevocable and improvident actions which will likely result in the selective dismemberment of the debtor's business to the permanent and immeasurable detriment of its creditors," WVAWC stated in its motion, adding that the court and creditors need more information about Freedom's financial and business position as well as its insurance coverage and its relationship with WV Funding, neither of which were mentioned in the bankruptcy papers.

"The terms of the DIP facility would provide the lender with a lien on all of the debtor's assets, a superpriority claim, and the ability to foreclose selectively on the assets and take away the most valuable ... leaving behind only the toxic facilities and huge damage claims caused by the Freedom spill."

While WVAWC didn't make Freedom Industries' list of its 20 largest creditors, company officials say the costs associated with the week-long water crisis and the 23 lawsuits filed to date against it should put them at the top of the list.